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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/530,511

04/06/2005

James R. Howarth

HOW1.005-US

5770

3775 7590 02/26/2010  
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EXAMINER

MERCEDES, DISMERY E

ART UNIT

PAPER NUMBER

2627

MAIL DATE

DELIVERY MODE

02/26/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/530,511	<b>Applicant(s)</b> HOWARTH ET AL.	
	<b>Examiner</b> DISMERY E. MERCEDES	<b>Art Unit</b> 2627	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 February 2010.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 41-43,45-48 and 51-53 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 41-43,45-48 and 51-53 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 April 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)         | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

1. This office action is in response to after final response filed 2/12/2010. In view of the new ground(s) of rejection, the finality of that action is withdrawn.

#### ***Claim Rejections - 35 USC § 101***

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 51-53 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claims 51-53 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claim 51 is drawn to an electronically readable storage medium containing data representing digital audio information, wherein the electronically readable storage medium can be the internet, as disclosed on the last paragraph of page 7, of instant specification. Therefore, given the broadest interpretation of the claim, fail(s) to fall within a statutory category of invention. See MPEP § 2106.01. The broadest reasonable interpretation of the claim in light of the specification concludes that the claim as a whole covers a transitory signal, which does not fall within the definition of a process, machine, manufacture or composition of matter (In Re Nuijten). Therefore, Claim 51 does not fall within a statutory category.

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 41-43, 45-48 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Note: rejection applies to any subsequent dependent claim.

In Claim 41, the limitation "providing a digitized wideband..." it is not clear where is this signal being provided to. Furthermore, it is not clear how the limitation "thereby separately adjusting the synchronization before and after the change" the synchronization is adjusted since the synchronization if the change in the period exceeds the limit or after the change in the period. Furthermore, Claim 41, also recites also recites the limitation "the recording which occurs after the change". There is no previous mention of recording after the change in the period in the claim. There is insufficient antecedent basis for this limitation in the claim.

Claim 43 recites the limitation "the instantaneous deviation". There is insufficient antecedent basis for this limitation in the claim.

In Claim 45, the limitation "providing an analog playback signal..." it is not clear where is this signal being provided to. Furthermore, it is not clear how the limitation "thereby separately adjusting the synchronization before and after the change" the synchronization is adjusted since the synchronization if the change in the period exceeds the limit or after the change in the period.

Claim 45, also recites the limitation "the digital recording". There is no previous mention of digital recording occurring after the change in the claim. There is insufficient antecedent basis for this limitation in the claim.

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***Allowable Subject Matter***

5. Claims 41 and 45 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: Wilkinson (US 5,218,486); De Mey et al. (US 6,603,820); Winslow et al. (US 4,353,089); Schwartz et al. (US 4,535,368); Petrovic et al. (US 2004/0207464); Knowlton (US 4,802,024); Cabot (US 5,818,240); Knowlton (US 4,777,541)

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DISMERY E. MERCEDES whose telephone number is (571)272-7558. The examiner can normally be reached on Monday - Friday, from 9:00am - 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hoa Thi Nguyen can be reached on 571-272-7579. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Dismery E. Mercedes/  
Examiner, Art Unit 2627

/HOA T NGUYEN/

Supervisory Patent Examiner, Art Unit 2627